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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Communication No. 56/2014

Opinion adopted by the Committee at its eighty-eighth session

Submitted by:	V.S. (represented by counsel, Vanda Durbakova)
Alleged victim:	The petitioner
State party:	Slovakia
Date of the communication:	30 April 2014 (initial submission)
Date of the present decision:	4 December 2015
Subject matter:	Discrimination in access to employment; effective protection and remedy against any act of racial discrimination; adequate reparation or satisfaction for any damage suffered as a result of racial discrimination and obligation of the State party to act against racial discrimination
Substantive issues:	Discrimination on the ground of national or ethnic origin
Procedural issues:	Level of substantiation of claims
Articles of the Convention	2, 5 and 6

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Annex

Opinion of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (eighty-eighth session)

concerning

Communication No. 56/2014*

Submitted by:	V.S. (represented by counsel, Vanda Durbakova)
Alleged victim:	The petitioner
State Party:	Slovakia
Date of the communication:	30 April 2014 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 4 December 2015,

Having concluded its consideration of communication No. 56/2014, submitted to it on behalf of V.S. under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the petitioner, her counsel and the State party,

Adopts the following:

Opinion

1. The petitioner is V.S., a national of Slovakia of Roma origin born in 1983. She claims to be victim of a violation by Slovakia[1] of article 2 (1) (a) and (c)-(e) and (2), read in conjunction with articles 5 (e) (i) and 6 of the Convention. She is represented by counsel, Vanda Durbakova.

The facts as submitted by the petitioner

2.1 The petitioner graduated from the University of Prešov in 2006 as a general and history teacher. During her studies, she worked as a teaching assistant and governess in

* The following members of the Committee participated in the examination of the present communication: Nourredine Amir, Alexei Avtonomov, Marc Bossuyt, José Francisco Cali Tzay, Anastasia Crickley, Ion Diaconu, Youngʻan Huang, Patricia Nozipho January-Bardill, Anwar Kemal, Melhem Khalaf, Gun Kut and Yeung Kam John Yeung Sik Yuen.

[1] The Convention was ratified by Slovakia on 28 May 1993 by way of declaration on succession, and the declaration under article 14 was made on 17 March 1995.

local elementary schools. Since 2007, she has been unsuccessfully looking for a position in one of the elementary schools in the region where she lives.

2.2 On 18 June 2009, the petitioner made a spontaneous application[2] for a post of history and education teacher at the I.B. Zoch Elementary School in Revúca, stating that if such position was not available, she was willing to accept a position of teaching assistant. The petitioner alleges that, on the day that she submitted her application in person, she met with the school's head teacher, who told her that, instead of looking for a job, she should have children like the other women of Roma origin. He allegedly added that, as a Roma woman, she would never get a job even if she tried to improve her qualification by further studies.[3] The petitioner felt humiliated and embarrassed by hearing such comments, in particular as Roma were generally perceived as not willing to work. On 26 July 2009, the head teacher sent a letter to the petitioner, informing her that there was no vacancy at the school but that her application would be kept on file in case a position became vacant. In September 2009, the petitioner found out that a position of teaching assistant had become vacant but that someone of non-Roma origin with fewer qualifications and less experience than her[4] had been hired.

2.3 Suspecting that she had been discriminated against because of her Roma origin, the petitioner filed a complaint with the Slovak National Centre for Human Rights[5] (the Equality Centre) and requested that it undertake an independent inquiry into her case with regard to what happened at the I.B. Zoch Elementary School, but also at other elementary schools to which she had applied and by which was not hired.[6] On 3 June 2010, the head teacher of I.B. Zoch Elementary School stated in his reply to the Equality Centre that the School had not been able to hire the petitioner because of the lack of vacant positions for the combination of subjects for which she is qualified. He added that, because the petitioner did not give her consent for the processing of her personal data, her application could only be kept on file for 30 days, which had elapsed when the position of teaching assistant became available for the year 2009/10. He further explained that the full-time teaching assistant position available was for work with a child with an attention deficit hyperactivity disorder. It required only a secondary school degree and was listed in salary bracket No. 7, which was the maximum wage that the school could pay. He noted that, as the petitioner had a university degree, she would have to be paid a salary within the bracket No. 9, which the school was not in a position to cover. Finally, the head teacher stated that the petitioner's former employers had suggested that she was problematic. On 20 August 2010, the Equality Centre concluded its enquiry, finding that there might be a violation of the principle of equal treatment in this case and recommended that the head teacher abide by anti-discrimination legislation and employ qualified personnel.

2.4 In parallel with her complaint before the Equality Centre, the petitioner requested the Ministry of Education, Science, Research and Sport (the Ministry of Education)[7] to issue an opinion about the school's employment practices and the argument it presented with regard to an alleged lack of funds for employment purposes. On 2 February 2010, the Ministry stated that a lack of funds is not a valid ground for preferring an applicant with a secondary school degree over an applicant with a university degree. On 2 August 2010, at

[2] There was no vacancy announcement for a teaching position.

[3] During the judicial proceedings, the head teacher denied having made such comments.

[4] The person who was hired had a secondary school diploma.

[5] Date not specified.

[6] The petitioner does not provide further details on those other cases, which are not part of the present communication.

[7] Date not specified.

the petitioner's request,[8] the Ministry issued a second opinion in which it stated that it was the head teacher who was responsible for the quality of the education provided at the school and who exclusively had the remit to hire employees.

2.5 On 11 October 2010, the petitioner initiated a civil complaint against the school before the District Court of Revúca, alleging a breach of the principle of equal treatment under articles 9 et seq. of the 2004 Anti-discrimination Act.[9] She requested an apology from the school and 10,000 euros compensation for non-pecuniary damages. On 28 March 2011, the District Court dismissed her complaint. The Court noted that, in accordance with the law, the school had the burden to prove that it did not discriminate against the petitioner by providing reasonable and logical arguments to explain why it hired a person less qualified than the petitioner for the teaching assistant position. The Court was satisfied with the explanations provided by the school, namely the limited funding for this position, the lack of a need to hire a person with a university degree for a position that only required a secondary school degree and the lack of discriminatory intention on the part of the school. The Court added that an applicant did not have a right to be employed because he or she fulfilled the established criteria or conditions of a position and that people might be subjected to differential treatment in the context of labour relations that were not necessarily discriminatory or unlawful.

2.6 On 20 April 2011, the petitioner filed an appeal with the Banská Bystrica Regional Court against the District Court decision. In the appeal, she stressed that she had made a prima facie case showing that the differential treatment was based on racial discrimination, and that the school therefore bore the burden of proof to demonstrate that no discrimination took place by providing reasonable and convincing arguments. She argued that the District Court had wrongly assessed the facts and evidence provided by the school and that its arguments should not have been considered as reasonable and convincing. On 16 August 2011, the Regional Court affirmed the District Court decision and its assessment of the arguments presented by the school. It therefore found the petitioner's appeal to be manifestly ill-founded. Unlike in the District Court opinion, it considered that the petitioner had not established a prima facie case that discrimination had occurred.

2.7 On 19 September 2011, the petitioner filed for an extraordinary recourse[10] with the Supreme Court against the Regional Court decision, claiming that her right to a fair trial had been violated, since the Regional Court had disregarded her arguments for appealing the decision of the District Court without properly examining them and that the decision of the Regional Court was therefore arbitrary. The petitioner considered that, by interpreting the domestic legislation in a restrictive manner, the Regional Court did not provide effective protection of her rights. She proposed that the case be submitted to the Court of Justice of the European Union for a preliminary ruling on the interpretation of European Union law. On 19 July 2012, the Supreme Court quashed the judgement of the Regional Court dated 16 August 2011 on the ground that the reasoning of this decision was incoherent. However, the Supreme Court did not address the arguments presented by the petitioner, in particular her request for a preliminary ruling by the Court of Justice of the European Union. The case was returned to the Regional Court of Banská Bystrica.

2.8 On 27 November 2012, the Regional Court reaffirmed the decision of the District Court, supporting the reasoning applied. It still considered the appeal of the petitioner to be ill-founded as, on the basis of the evidence provided, it could not be considered that the District Court had wrongly assessed the facts. The Regional Court considered that, because

[8] The petitioner in fact requested an opinion stating, inter alia, that the head teacher had the remit to hire employees subject to legal limitations.

[9] Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws.

[10] *Dovolanie* under article 237 (f) of the Code of Civil Procedure.

of the competitiveness between jobseekers, the non-hiring of a person of Roma origin that was supported by logical and sensible reasons did not ipso facto constitute discriminatory treatment on the ground of race.

2.9 On 25 January 2013, the petitioner filed a constitutional complaint with the Constitutional Court, claiming that all the domestic courts had come to conclusions that were arbitrary, unjustifiable and unsustainable, resulting in a breach of her fundamental rights and freedoms guaranteed by the Constitution of Slovakia and the Convention (arts. 5 and 6) and other international treaties. On 10 July 2013, the Constitutional Court dismissed the petitioner's complaint as groundless. It reviewed the decisions of the domestic courts and came to the conclusion that they gave clear and comprehensible answers to all relevant legal and factual issues relating to the judicial protection of the petitioner's rights as her arguments were duly taken into account by the various courts, and that her rights had therefore not been violated.

2.10 The petitioner claims that she has exhausted all relevant domestic remedies. She indicates that the final decision of the Constitutional Court, dated 10 July 2013, was only delivered to her via her counsel on 7 November 2013. Thus, she argues that the present communication is submitted to the Committee within the six-month period stipulated in article 14 (5) of the Convention.

The complaint

3.1 The petitioner claims to be victim of a violation by Slovakia of article 2 (1) (a) and (c)-(e) and (2), read in conjunction with articles 5 (e) (i) and 6, of the Convention. She maintains that the State party, through its national courts, has failed to provide her with effective protection and effective remedy against the racial discrimination to which she has been subjected in the context of recruitment procedures by a public elementary school in Revúca, and that the State Party has failed to take all appropriate measures to eliminate racial discrimination in the field of access to employment.

3.2 She states that the domestic courts of the State party disregarded her arguments without any reasoning and ignored the evidence she submitted and her request to submit the case to the Court of Justice of the European Union for a preliminary ruling. The petitioner considers that the interpretation of the anti-discrimination legislation made by the District Court, according to which there is no protection provided in law in cases of unequal treatment within recruitment procedures, does not comply with European Union law and international human rights treaties.

3.3 In addition, the petitioner argues that, as she had established a prima facie case of racial discrimination, the burden of proof was shifted to the school. She argues that, in its second decision dated 27 November 2012, the Regional Court wrongly considered that the petitioner had to prove the school's intent to discriminate against her, while she was legally not obliged to do so. She adds that the courts wrongly assessed the difference of treatment to which she was subjected in the light of the situation faced by other unsuccessful non-Roma applicants, while it should have compared her situation to that of the successful non-Roma applicants.

3.4 The petitioner also claims that the remedies provided by domestic legislation are illusory and not effective, as they do not provide adequate compensation to victims of racial discrimination and do not sanction the perpetrators of racial discrimination. The petitioner refers to the concluding observations of the Committee on the ineffective implementation of the anti-discrimination legislation by the State party[11] and recalls that her case should be

[11] See CERD/C/SVK/CO/9-10, para. 7.

considered in the global context of racial discrimination suffered by persons of Roma origin in Slovakia.

3.5 Finally, the petitioner requests that the State party provide her with appropriate reparation, including adequate compensation, in accordance with domestic legislation; ensure that the existing domestic anti-discrimination legislation is applied effectively and in accordance with the Convention in order to provide effective protection and remedies against any acts of racial discrimination; and that appropriate and regular training is organized for officials of the courts and judicial authorities on the elimination of negative stereotypes of Roma and of racial prejudice, the Convention and the Committee's recommendations.

State party's observations on admissibility and the merits

4.1 On 12 September 2014, the State party submitted its observations on admissibility and the merits of the communication presented by the petitioner. The State party assures the Committee of its commitment to improving its legislation and policies with a view to preventing racial discrimination in all its forms, including with regard to the right of an individual to equality before the law, including in the area of economic, social and cultural rights.

4.2 As regards the admissibility of the complaint, the State party concedes that the petitioner has exhausted all available domestic remedies and submitted the communication within six months of the exhaustion of the last remedy. It concludes that the conditions for admissibility have been met.

4.3 The State party recalls that the petitioner applied for the job of history and education teacher at the Elementary School, stating that she was willing to accept a teaching assistant position, namely a lower position than befitting her professional qualifications. It considers that the Elementary School did not accept the petitioner's job application owing to a lack of vacancies, as education as a subject is not taught at elementary schools, and informed her that her job application would be kept on file. Later, a person with fewer qualifications than the petitioner was recruited to the position of a teaching assistant. The petitioner considers that she was not hired for that position because of her ethnic origin. The District Court dismissed the petitioner's action. The Court stated that the petitioner had failed to establish facts from which it could be inferred that there had been direct or indirect discrimination, or that there had been a violation of the principle of equal treatment because of discrimination on the grounds of race or ethnicity.[12]

4.4 The State party submits that the petitioner's appeal against the decision of the District Court was heard by the Banská Bystrica Regional Court, which considered that the District Court's decision was substantially correct. The petitioner then filed for an extraordinary recourse with the Supreme Court, requesting it to quash the Regional Court decision and remand the case for further proceedings.

4.5 The State party recalls that, according to the Supreme Court, the reasoning of the decision of the Regional Court was inconsistent in its arguments and illogical, and that it therefore quashed the judgment of the Regional Court and remanded the case for further proceedings. The Regional Court again confirmed the District Court's decision.[13] Thereafter, the petitioner filed a complaint with the Constitutional Court of the Slovak Republic,[14] claiming a violation of her right to protection by an independent and impartial court and by other bodies (art. 46, para. 1, of the Constitution); and of her right to a fair trial

[12] See judgement of the District Court in Revúca (file No. 6C/207/2010-129).

[13] See decision of the Supreme Court of the Slovak Republic (file No. 7 Cdo 148/2011) and decision of the Regional Court in Banská Bystrica (file No. 13Co/263/2012-208).

[14] Under article 127, para. 1, of the Constitution.

(art. 47, para. 3, of the Constitution). The Constitutional Court rejected her complaint as groundless, stating that the general courts had proceeded in compliance with the spirit and purpose of the legislation covering the protection against discrimination. The State party therefore considers that the petitioner had access to effective remedies and actually exhausted them.[15]

4.6 As regards the petitioner's request for an examination of her case by the Office of the Plenipotentiary of the Government for Roma Communities,[16] in which the petitioner and her sister[17] claimed to have been victims of discriminatory treatment by elementary schools in Revúca, the State party submits that their claims were based on the ground that they are Roma. They further argued that, despite having completed their university education, they failed to get jobs as teachers. The Office of the Plenipotentiary concluded that the combination of teaching subjects (history and education) in which the petitioner graduated was not required in elementary schools. The Office also found that there were no vacancies for a position of teacher in elementary schools in Revúca at the time when the petitioner applied. The Office also informed the petitioner that elementary schools had kept her application on file and that there was a vacancy for an English teacher at a private high school in Revúca. The Office also noted that, if it had found minimum indications that established the possibility of obtaining evidence of discriminatory conduct by the school when the petitioner filed the petition, it would have provided the petitioner with the necessary assistance for her to be able to acquire and submit evidence in proceedings before the courts. According to the State party, the petitioner also approached the Equality Centre, which, inter alia, provides legal assistance to victims of discrimination and manifestations of intolerance.[18] The Centre stated that, in the case of the petitioner, insufficient facts or documents that would allow the reasonable assumption that the principle of equal treatment was not respected on the basis of her racial or ethnic origin had been presented. The Centre acknowledged that the conduct denounced by the petitioner might have given rise to some damage or disadvantage, but it considered that there must be a reasonable assumption of a causal link between the cause for differential treatment and the damage. According to the Centre, not all differential treatment can be deemed as discriminatory or as a violation of the principle of equal treatment under the Anti-discrimination Act. It might, however, constitute a violation of other rights and legitimate interests of individuals stipulated in other laws. The Centre further gave its opinion that the domestic courts did not apply properly the shifted burden of proof in the petitioner's case.

4.7 The State party objects to the petitioner's allegations regarding the lack of effective remedy available to her with regard to the racial discrimination to which she has allegedly been subjected to as a Roma. The State party also objects to the petitioner's allegation that it had not taken all appropriate measures to eliminate racial discrimination, inter alia, in access to employment. It also considers that the existing national legislative and institutional framework provides sufficient guarantees for protection against discrimination on any grounds. The State party considers that, in the case of a violation of the prohibition of discrimination, its legislation provides effective tools to remedy the situation, including judicial protection.

4.8 As regards the petitioner's objections to the application of the shift of the burden of proof by the national courts, the State party reports that this shift is in itself an important tool in the fight against discrimination. It means that, if it can be reasonably inferred from the plaintiff's allegations that some direct or indirect discrimination occurred, the burden of

[15] See decision of the Constitutional Court of the Slovak Republic (file No. II. ÚS 383/2013-16).

[16] A non-judicial body.

[17] The petitioner refers to her sister only indirectly to demonstrate that her allegations denounce a general pattern.

[18] See art. 1, para. 2 (e), of Act No. 308/1993 Coll. on the establishment of the Slovak National Centre for Human Rights, as amended.

proof shifts to the defendant to prove that such discrimination has not occurred. The State party further argues that the Anti-discrimination Act imposes different requirements on the plaintiff and defendant as regards the nature or quality of the evidence produced during the dispute. The plaintiff has the obligation to bring forward the facts from which it may reasonably be presumed that there has been discrimination.[19] In cases where the burden of proof is shifted to the defendant, he or she must prove that discrimination has not occurred. The State party concedes that the shift becomes effective if the evidence submitted to court by the plaintiff gives rise to a reasonable assumption that a violation of the principle of equal treatment indeed occurred,[20] namely that the alleged facts are proven with clear and unambiguous evidence.

4.9 The State party additionally argues that the application of anti-discrimination legislation, and in particular of the shifted burden of proof, presents a certain challenge for the general national courts, which need to address it effectively. The State party acknowledges that, after shifting the burden of proof, the first instance court should have asked the defendant to explain and demonstrate through additional evidence that the alleged discrimination had not occurred. When the plaintiff claims that discrimination has occurred and the defendant claims that it has not, it does not mean that the defendant is right. In practice, the plaintiff holds a privileged position compared to the defendant precisely because of the existence of effective guarantees for the protection against discrimination. The State party adds that, if the court decides to shift the burden of proof, it is not possible to demonstrate that there has not been a violation of the principle of equal treatment only by referring to the likelihood or unlikelihood of the alleged violation: the Anti-discrimination Act requires the defendant to prove that there has not been a violation.

4.10 In this connection, the State party points out that the District Court did not rely solely on the facts and allegations as submitted by the plaintiff and her witnesses, but also relied on facts that established the improbability of the alleged discrimination. Even before the court allows the burden of proof to be shifted, the court must assess the facts to determine whether it can logically be assumed that the principle of equal treatment has been violated. The State party does not share the petitioner's view that, in order to assess her case, the only comparator is a successful jobseeker. To deduce that there was discrimination based on the petitioner's Roma origin when filling the newly created job, the State party considers that the issue must be addressed in its complexity, also taking into account the other jobseekers. As appears from the case file, several jobseekers sent their job applications for the position in question. They held university degrees and had many years of relevant professional experience. The head teacher, however, decided to grant employment to a less qualified person, educated in different field, who was without experience and was not Roma. He treated this person more favourably than other jobseekers with higher qualifications, who were more experienced and non-Roma. The State party therefore submits that the selection made was not based on the candidate's ethnicity, but most probably on the fact that, as he confirmed in his testimony, the head teacher personally knew the selected jobseeker. The fact that the Elementary School has employed Roma persons in the past is a supporting argument in this regard.

4.11 The State party further considers that the District Court was right in dismissing the action, because the petitioner failed to prove the alleged discrimination. The fact that the petitioner disagrees with the evaluation of the evidence does not make her claims admissible if the legal conditions were not met. However, the State party recognizes the importance of ensuring that the courts, including with respect to the instant case, apply the shifted burden of proof with a more careful approach.

[19] See art. 11, para. 2, of the Anti-discrimination Act.

[20] Ibid.

4.12 The State party further disagrees with the petitioner's argument that the general courts did not deal with her case properly. It notes that the petitioner had exhausted the ordinary and extraordinary remedies available. As regards the alleged violation of the fundamental right to judicial protection and the right to a fair trial, the State party states that neither the general courts nor the Constitutional Court, which ruled on the petitioner's complaint, reached the conclusion that there had been a violation of her rights. The petitioner had access to what is known as an anti-discrimination action. The decision of the first instance court was reviewed by the appellate court, which properly assessed the merits of the petitioner's appeal. The right to a fair trial includes the right of access to a clear and unambiguous legal reasoning that addresses all the relevant legal and factual issues related to judicial protection, without necessarily going into all the details provided by the parties. A decision that briefly and clearly provides a factual and legal basis is sufficient to comply with the parties' right to a fair trial.

4.13 The State party further considers that, in the present case, domestic courts treated both parties equally. All the evidence and testimonies submitted were taken into account and the general courts treated the petitioner's case seriously, without trivializing the circumstances of her case. The State party concludes that national courts acted in compliance with the purpose and spirit of the anti-discrimination legislation. The fact that the judicial proceedings did not meet the petitioner's expectations does not amount to a violation of her right to an effective remedy.

4.14 As regards the petitioner's objection that the domestic courts did not address her proposal to submit the case to the Court of Justice of the European Union for preliminary ruling, the State party shares the findings of the Constitutional Court that the petitioner's proposal was not adequately substantiated.[21] The Constitutional Court examined the petitioner's allegations that the District Court refused her action as inadmissible in its substance, which she considered to be caused by a misinterpretation of the law of the European Union. The District Court in fact dealt with the merits of the alleged discrimination of the petitioner in her access to employment, without accepting her request to adjourn the proceedings and refer the matter of the interpretation of the European legislation to the Court of Justice of the European Union first.

4.15 Regarding the non-judicial tools for the protection against discrimination in employment, the State party points out the possibility for the petitioner to file an appeal with the Labour Inspectorate.[22] Similarly, the petitioner has the right to file a complaint under the Act on Complaints.[23] The petitioner also had the opportunity, pursuant to the Act on Complaints, to file a submission with the School Inspectorate,[24] which exercises State control over the teaching management, including the issue of the recruitment of teaching staff. The State party is not aware whether the petitioner made use of those means of protection against discrimination in access to employment. In order to demonstrate its commitment to preventing discrimination on any grounds, including discrimination based on race or ethnicity, the State party refers to its 2012-2020 Strategy for the Integration of Roma.[25] The State party also notes that the issue of the prevention and elimination of racial discrimination is part of an ongoing dialogue between the Government and international organizations. Their recommendations, including the recommendations of the United Nations treaty bodies, are implemented by the State party. The State party also recalls its

[21] File No. II. CC 383/2013-16.

[22] See art. 2, para. 1 (a), of Act No. 125/2006 Coll. on Labour Inspection.

[23] Act No. 9/2010 Coll.

[24] See art. 13, para. 1, of Act No. 596/2003 Coll. on State Administration in Education and School Self-government.

[25] The Strategy has been implemented since 1 January 2012.

recently completed second universal periodic review, where it reaffirmed its commitment to continue the implementation of the existing anti-discrimination legislation.[26]

4.16 The State party concludes that there has been no violation of the petitioner's rights under article 2 (1) (a) and (c)-(e) and (2), in conjunction with articles 5 (e) (i) and article 6, of the Convention. The State party also reiterates its commitment to continuing to take additional measures to combat racial discrimination, including awareness-raising and the elimination of negative stereotypes in this regard. It considers that the recommendations of international bodies provide an important guideline in this regard. The State party also welcomes the constructive dialogue with the Committee, which, thanks to the valuable experience and expertise of its members, assists the States parties to implement effectively the Convention.

Petitioner's comments on the State party's observations on admissibility and the merits

5.1 On 13 November 2014, the petitioner submitted comments on the State party's observations on admissibility and the merits of her communication. The petitioner maintains her arguments outlined in the original communication and notes that the fact that she does not comment on some of the State party's observations should not be interpreted as her agreement therewith.

5.2 Since the State party does not object to the admissibility of the communication, the petitioner requests the Committee to declare her communication admissible and to proceed with its consideration of the merits.

5.3 As regards the merits, the petitioner maintains that, although she submitted her case to the domestic courts in order to pursue remedies for the racial discrimination that she suffered, the domestic authorities ignored her arguments and did not implement the anti-discrimination legislation effectively. She notes that the State party recognizes that the application of anti-discrimination legislation, and in particular of the shifting of the burden of proof, presents a certain challenge for domestic courts and acknowledges that some difficulties arose in the application of this instrument in the petitioner's case by the first instance court.

5.4 The petitioner objects to the State party's interpretation of how the anti-discrimination legislation, and in particular the shifting of the burden of proof in discrimination cases, should be implemented. She claims that such interpretation does not comply with the relevant European Union directives and the jurisprudence of international judicial and/or quasi-judicial human rights bodies,[27] in so far as it puts the burden of proof on the plaintiff. The petitioner further considers that the requirement to prove the facts, such as the ground of the alleged discrimination, is beyond her control and would also be illogical. She considers that admitting such an interpretation would violate the basic principles of protection against discrimination within the court proceedings.

5.5 The petitioner also objects to the State party's submission about the examination of the petitioner's case by non-judicial domestic authorities, such as the Office of the

[26] See the outcome report of the universal periodic review of Slovakia (A/HRC/26/12).

[27] The author refers to the European Court of Human Rights, the Court of Justice of the European Union and the United Nations treaty bodies. She refers to the decisions of the Court of Justice of the European Union in the case *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV* (C-54/07 [2008] Coll. I-5187) of 10 July 2008 and in the case of *Brunnhofer v. Bank der Österreichischen Postsparkasse AG* (C-381/99 [2001] EC Coll. I-4961) of 26 June 2001, paras. 51-62, and decisions of the European Court of Human Rights in *Natchova and others v. Bulgaria* (applications No. 43577/98 and No. 43579/98) of 6 July 2005, *Timishev v. Russia* (applications No. 55762/00 and No. 55974/000) of 13 December 2005, and *D.H. and others v. Czech Republic* (application No. 57325/00) of 13 November 2007.

Plenipotentiary for Roma Communities and the Equality Centre, and their respective conclusions. The petitioner notes that she complained to those bodies not only about the discriminatory treatment referred to in the present case, but also about the discriminatory treatment she suffered on other occasions, when applying for jobs at other schools in her region. She argues that the State party does not differentiate those facts and refers to some of the conclusions of those bodies that are not relevant to her complaint to the Committee. The petitioner reiterates that, in the present case, she claims to have suffered racial discrimination in the context of her application on 18 June 2009 to the I.B. Zoch Elementary School in Revúca for the position of history and education teacher. She reiterates that she had stated that, if such a position were not available, would be was willing to accept a position of teaching assistant.

5.6 The petitioner also insists that the State party violated its positive obligation to protect her from discrimination through other measures, including ensuring that legislative provisions concerning discrimination and equality be implemented effectively, in compliance with its international human rights obligations.

5.7 The petitioner also refers to her original arguments with regard to the conclusions of the Equality Centre concerning the merits of her case. The petitioner contests the failure by the State party to provide free and qualified legal aid for the victims of racial discrimination. She argues that, between 2010 and 2012, the Equality Centre provided legal representation only in one case of racial discrimination, which she considers alarming. She refers to reports of specialized non-governmental organizations that criticize the passivity and lack of competence of the State party to identify cases of discrimination.[28] The petitioner argues that the conclusion of the Equality Centre in her case should be interpreted in this context.

5.8 The petitioner reiterates that the described violation and the necessity to identify and effectively sanction racial discrimination in access to employment is important not only in order to provide the petitioner with adequate remedies, but also as a preventive measure to ensure that such acts of discrimination do not occur in the future. The petitioner further reiterates that her case should be addressed in a broader context of negative racial stereotypes and discriminatory practices against the Roma minority in Slovakia. In this regard, she refers to the recent results of the European Union Agency for Fundamental Rights Roma survey,[29] according to which, in Slovakia, 19 per cent of Roma women interviewed and 21 per cent of Roma men interviewed aged 16 and above who had looked for work during the past five years felt discriminated against because of their ethnicity. The petitioner also refers to the United Nations Development Programme report on the living conditions of Roma households in Slovakia, according to which Roma people are largely excluded from the labour market in Slovakia, including because of the racial discrimination they face.[30] The petitioner also contends that, while the State party declares that it adopts and implements measures aimed at preventing discrimination, the living conditions and the situation of Roma in Slovakia, as well as the petitioner's case, illustrate the contrary.

5.9 The petitioner therefore requests that the Committee reject the arguments of the State party and reiterates her position that her case discloses a violation of her rights under articles 2 (1) (a) and (d), 5 (e) (i) and 6 of the Convention.

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[28] See also written comments of non-governmental organizations to the Committee, p. 13. Available at http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB.pdf.

[29] Available at http://fra.europa.eu/sites/default/files/fra-2014-romasurvey-gender_en.pdf.

[30] See "Report on the Living Conditions of Roma households in Slovakia 2010" (UNDP Europe and CIS, Bratislava Regional Centre, 2012), p. 128. Available at http://www.eurasia.undp.org/content/dam/rbec/docs/Report-on-the-living-conditions-of-Roma-households-in-Slovakia-2010.pdf.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether or not the communication is admissible.

6.2 The Committee notes the State party's assertion that the petitioner has exhausted all available domestic remedies and submitted the communication within six months of the exhaustion of the last remedy, considering that the petitioner has met the requirements of article 14 of the Convention.

6.3 As the Committee finds no obstacles to the admissibility of the present communication, it declares it admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the submissions and documentary evidence produced by the parties, as required under article 14 (7) (a) of the Convention and rule 95 of its rules of procedure.

7.2 The main issue before the Committee is whether the State party fulfilled its obligations to take effective action in response to the allegations of the petitioner that she was discriminated against because of her Roma origin when trying to access to employment in a public school, and whether the State party, through its national courts and other institutions, ensured effective protection and provided her with effective remedy against the alleged racial discrimination, including adequate reparation or satisfaction for a damage suffered.

Violation of article 5 (e) (i)

7.3 The Committee notes the petitioner's claim that she has been subjected to racial discrimination in the context of the recruitment process carried out by a public elementary school in Revúca. In that context, the Committee notes the information from the State party that the reason for the petitioner's alleged discrimination was not reliably substantiated in the proceedings before the relevant domestic administrative and judicial authorities. While admitting that the petitioner suffered damage or disadvantage, the State party maintains that a causal link between the reason for differential treatment and the resulting disadvantage had not been established. The Committee, in particular, notes the statement of the Ministry of Education of 2 February 2010, according to which a lack of funds is not a valid ground for preferring an applicant with a secondary school degree to an applicant with university degree and that the employer should support the recruitment of qualified applicants, while unqualified candidates should be recruited only exceptionally.[31] The Committee also notes the conclusion of the Equality Centre that the petitioner's case might amount to a violation of the principle of equal treatment because of the recruitment of an unqualified candidate, and its recommendation that the head teacher abide by the anti-discrimination law. The Committee further notes that the comparator taken into account by the State party to see if there was a difference of treatment is other job applicants who were not selected, and not the person who was selected, and the statement by the State party that the selection was based on the fact that the person selected was known by the school's head teacher. The Committee considers that the State party cannot disclaim its responsibility, since the head teacher of a public school, although being a separate legal entity, has the remit to select

[31] See the judgement of the District Court in Revúca of 28 March 2011, p. 3, first para.

school personnel in the context of the exercise of a public service. The Committee observes that the State party has not satisfactorily replied to the petitioner's allegations in this regard and did not provide persuasive arguments to justify the differential treatment of the petitioner when disregarding her job application. The Committee, considering that, in the case under review, the preferential selection for a teaching assistant position of a candidate who, as a commercial assistant, was underqualified could not be justified by her professional competences,[32] or a lack of funds, concludes that the facts before it disclose a violation of the petitioner's right to work without distinction as to race, colour, national or ethnic origin, in violation of the State party's obligation to guarantee equality in respect of the right to work, as enshrined in article 5 (e) (i) of the Convention.

Violation of article 6 (in conjunction with art. 2)

7.4 The Committee recalls that it is not its role to review the interpretation of facts and national law made by domestic authorities, unless the decisions were manifestly arbitrary or otherwise amounted to a denial of justice.[33] However, the Committee has to examine whether the decisions of domestic courts deprived the petitioner of her right to effective protection and effective remedy against racial discrimination. In this connection, the Committee notes that, between 2009 and 2013, the petitioner brought a prima facie case of racial discrimination to the attention of the Equality Centre, the Ministry of Education, Sciences, Research and Sport and the regular and extraordinary domestic courts. In this context, the petitioner requested that, through the application of the shift of the burden of proof, the Elementary School in Revúca, as defendant, justify that it did not discriminate against the petitioner on the ground of her Roma origin. In particular, she requested that the Elementary School provide reasonable and convincing arguments to explain why it did not consider her application for a teacher position and refused her application for the teaching assistant position, as it hired a person less qualified than the petitioner for the latter post. The Committee notes the petitioner's claim that the district and regional courts wrongly assessed the facts and evidence presented by the Elementary School, because her situation was not compared to the one of the non-Roma applicant who was selected for the position to which she had applied. The Committee further notes the petitioner's claim that, in its decision of 27 November 2012, the Regional Court requested her to prove the school's intent to discriminate against her, while she should not have been requested to do so in compliance with the shifted burden of proof under the Anti-discrimination Act.[34] The Committee also notes the State party's assertion that the application of anti-discrimination legislation, and in particular of the shifted burden of proof, presents a certain challenge for the general national courts, which need to address it effectively; and that the courts must apply the shifted burden of proof with a more careful approach, including with respect to the instant case. The Committee considers that the courts' insistence that the petitioner prove discriminatory intent is inconsistent with the Convention's prohibition of conduct having a discriminatory effect, and also with the procedure of shifted burden of proof introduced by the State party. Since the State party has adopted such a procedure, its failure to apply it properly amounts to a violation of the petitioner' s right to an effective remedy, including appropriate satisfaction and reparation for the damage suffered. The Committee

[32] See the judgement of the District Court in Revúca of 28 March 2011, p. 3, last para., where it is stated that the successful candidate was a commercial assistant.

[33] See communication No. 40/2007, *Er v. Denmark*, opinion adopted on 8 August 2007, para. 7.2, in which the Committee reaffirmed its role to review facts and interpretation of national laws in situations where a decision would be manifestly arbitrary or otherwise amounting to a denial of justice.

[34] See para. 12 (2) of the Act.

therefore concludes that the petitioner's rights under articles 2 (1) (a) and (c) and 6 of the Convention have been violated.[35]

7.5 In the light of the above findings, the Committee will not examine separately the petitioner's allegations under article 2 (1) (d) and (e) and (2) of the Convention.

8. In the circumstances of the case, the Committee, acting under article 14 (7) (a) of the Convention, considers that the facts before it disclose a violation of articles 2 (1) (a) and (c), 5 (e) (i) and 6 of the Convention by the State party.

9. The Committee recommends that the State party convey an apology to the petitioner and grant her adequate compensation for the damage caused by the above-mentioned violations of the Convention. The Committee also recommends that the State party fully enforces its Anti-discrimination Act: (a) through the enhancement of available court proceedings for victims of racial discrimination by ensuring, inter alia, that the principle of shifted burden of proof is applied in accordance with article 11 of the Anti-discrimination Act; and (b) through the provision of clear information about available domestic remedies in cases of racial discrimination. The Committee further recommends that the State party take all measures necessary to ensure that persons involved in education, at all levels, are periodically trained on the requirements to prevent and avoid racial discrimination, in accordance with the provisions of the Convention. In addition, the Committee recommends that the State party ensure the organization of adequate training programmes on equality before the law for law enforcement officials, including judges, focusing on the application of the Convention and the Anti-discrimination Act in the courts.[36] The State party is also requested to give widely disseminate the Committee's opinion, including among judicial bodies, and to translate it into the official language of the State party.

10. The Committee wishes to receive, within 90 days, information from the State party about the measures taken to give effect to the Committee's opinion.

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[35] See communications No. 10/1997, *Habassi v. Denmark*, Opinion adopted on 17 March 1999, para. 9.3, and No. 40/2007, *Er v. Denmark*, para. 7.4.

[36] See also CERD/C/SVK/CO/9-10, para. 7.